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SUPREME COURT OF THE UNITED STATES.

No. ~~102~~ 47.

UNION BANK OF GEORGETOWN, PLAINTIFF IN ERROR,

VERSUS

GEORGE B. MAGRUDER.

IN ERROR TO THE CIRCUIT COURT U. S. FOR WASHINGTON, D. C.

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DISTRICT OF COLUMBIA, sct.

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the first Monday of May, being the second day of the same month, in the year of our Lord one thousand eight hundred and thirty-one, and of the independence of the United States of America the fifty fifth:

Present:

The honorable WILLIAM CRANCH, *Chief Judge.*
BUCKNER THRUSTON and JAMES S. MORSELL, *Assistant Judges.*
HENRY ASHTON, Esquire, *Marshal.*
WILLIAM BRENT, *Clerk.*

In the record of proceedings of the same court, among others are the following, to wit:

THE PRESIDENT AND DIRECTORS OF THE UNION BANK OF GEORGETOWN,
against
GEORGE B. MAGRUDER.

Be it remembered, that heretofore, to wit, on the first Monday of May, in the year of our Lord one thousand eight hundred and thirty, the said President and Directors of the Union Bank of Georgetown, by Francis S. Key and James Dunlop, Esquires, their attorneys, filed in the circuit court here the mandate of the Supreme Court of the United States, in the words, and of the tenor following, to wit:

Mandate from the Supreme Court of the United States.

UNITED STATES OF AMERICA, ss.—*The President of the United States of America to the honorable the Judges of the Circuit Court of the United States for the District of Columbia, holden in and for the county of Washington, greeting:*

Whereas, lately, in the circuit court of the United States for the District of Columbia, holden in and for the county of Washington, before you or some of you, in a cause wherein the President and Directors of the Union Bank of Georgetown were plaintiffs, and George B. Magruder was defendant, the judgment of the said circuit court was in the words following, viz: "Therefore, it is considered by the court here that the said President and Directors of the Union Bank of Georgetown recover against the said George B. Magruder, as well the sum of six hundred and forty three dollars and twenty-one cents, current money, with interest thereon from the eighth day of November, in the year eighteen hundred and seventeen, their damages aforesaid, by the jurors aforesaid, in form aforesaid assessed, to be sustained by occasion of the nonperformance of the promise and assumption aforesaid, as the sum of sixteen dollars and sixty-one cents, by the court here unto the said plaintiffs, on their assent, adjudged for their costs and charges by them about their suit in this behalf laid out and expended; and the said defendant in mercy, and so forth;" as by the inspection of the transcript of the record of the said circuit court, which was brought into the Supreme Court of the United States, by virtue of a writ of error, agreeably to the act of Congress in such case made and provided, fully and at large appears. And whereas in the present term of January, in the year of our Lord one thousand eight hundred and thirty, the said cause came on to be heard before the said Supreme Court, on the said transcript of the record, and was argued by counsel; on consideration whereof, it is ordered and adjudged by this court, that the judgment of the said circuit court in this cause be, and the same is hereby reversed, and that the said cause be, and the same is hereby remanded to the said circuit court with directions to award a venire facias de novo in said cause.

February 15· 1830.

"You, therefore, are hereby commanded, that such further proceedings be had in said cause, as according to right and justice, and the laws of the United States, ought to be had, the said writ of error notwithstanding.

Witness, the honorable John Marshall, Chief Justice of said Supreme Court, the second Monday in January, in the year of our Lord one thousand eight hundred and thirty.

WM. THOS. CARROLL, [SEAL.]
Clerk of the Supreme Court of the United States."

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And in pursuance of the said mandate, come into the circuit court here, as well the said President and Directors of the Union Bank of Georgetown, by their attorneys aforesaid, as the said George B. Magruder, by Robert P. Dunlop, Esquire, his attorney: thereupon, the record of the cause referred to in said mandate, being produced, is in the words following, to wit:

Record in the original cause.

Be it remembered, that heretofore, to wit, on the twenty-sixth day of April, in the year of our Lord one thousand eight hundred and twenty-five, the said President and Directors of the Union Bank of Georgetown, by Francis S. Key and James Dunlop, Esquires, their attorneys, prosecuted and sued forth out of the circuit court here the United States' writ of capias ad respondendum, directed to the marshal of the District of Columbia, in the words, and of the tenor following, to wit:

Capias ad satisfaciendum.

DISTRICT OF COLUMBIA, to wit.—*The United States of America to the marshal of the District of Columbia, greeting:*

We command you, that you take George B. Magruder, late of Washington county, if he shall be found within the county of Washington, in your said district, and him safely keep, so that you have his body before the circuit court of the District of Columbia, to be held for the county aforesaid, at the city of Washington, on the first Monday of May next, to answer unto the President and Directors of the Union Bank of Georgetown, in a plea of trespass on the case, and so forth. Hereof, fail not at your peril, and have you then and there this writ.

Witness, William Cranch, Esquire, Chief Judge of our said court, at the city of Washington, the 16th day of April, Anno Domini one thousand eight hundred and twenty-five.

Issued the 26th day of April, 1825.

W. BRENT, *Clerk.*

K. and D.

At which said first Monday of May, in the year of our Lord one thousand eight hundred and twenty-five, being the day of the return of the aforegoing writ, comes into the circuit court here, the said President and Directors of the Union Bank of Georgetown, by their attorneys aforesaid; and the marshal of the district aforesaid, to whom the said aforegoing writ was in form aforesaid directed, makes return thereof to the court here, thus endorsed, to wit: "Cepi, Tench Ringgold, Marshal" And the said George B. Mugruder being called, appears in court here, by Robert P. Dunlop, Esquire, his attorney; and thereupon, on motion of the said President and Directors, by their attorneys aforesaid, it is ruled by the court here, that the said George B. Magruder give special bail in the plea aforesaid, or, in default thereof, be committed to the custody of the marshal of the district aforesaid: whereupon, a certain Thomas G. Waters, present here in court, in his own proper, and, (with the consent of the said President and Directors, by their attorneys aforesaid,) undertakes for the said George B. Magruder, that, in case the aforesaid President and Directors shall recover judgment against

Return of Capias.

Special bail.

the said George B. Magruder in the plea aforesaid, or that the said George B. Magauder shall be therein legally convict, that then, the said George B. Magruder shall pay the condemnation of the court thereupon, or render his body to the custody of the marshal of the district aforesaid, in satisfaction thereof, or that he, the said Thomas G. Waters, will do the same for him: and thereupon, the said President and Directors, by their attorneys aforesaid, declare against the said George B. Magruder, in the plea aforesaid, in form following, to wit:

Rule nar.

Nar.

DISTRICT OF COLUMBIA, *Washington county, ss.*

George B. Magruder, late of Washington county, was attached to answer unto the President and Directors of the Union Bank of Georgetown, in a plea of trespass on the case, and so forth: whereupon, the said plaintiffs, by J. Dunlop, their attorney, complain that, whereas, heretofore, to wit, on the eighth day of November, in the year of our Lord eighteen hundred and seventeen, at Georgetown, to wit, at Washington county aforesaid, one George Magruder, in his life time, made his certain promissory note in writing, bearing date the day and year aforesaid, and thereby, then and there, seven years after the date thereof, promised to pay to the defendant, George B. Magruder, by the name of George B. Magruder, or order, the sum of six hundred and forty-three dollars twenty-one cents, current money of the United States, for value received, with interest; and the said defendant, to whom, or to whose order the payment of the said sum of money, in the said note mentioned, was to be made, afterwards, before the payment thereof, and before the time limited in said note for the payment thereof, to wit, on the day and year aforesaid, at the county aforesaid, endorsed the said note, and thereby, then and there ordered and appointed the said sum of money, in the said note mentioned, to be paid to the said plaintiffs.

And the said plaintiffs aver, that, before the expiration of the said time limited in the said note for the payment thereof, the said George Magruder died, and letters of administration on the personal estate of the said George were in due form of law granted to the defendant; and the said defendant, as the administrator of said George, became liable to pay the said note on the eleventh day of November, eighteen hundred and twenty-four, at the county aforesaid, to the said plaintiffs; but the defendant did not then, or at any time since, as administrator aforesaid, or in any other capacity, pay the same, or any part thereof, to the plaintiffs, but then and there wholly refused so to do; of all which premises, the said defendant, as endorser, afterwards, to wit, the day and year aforesaid, at the county aforesaid, had notice.

By reason whereof, and by force of the statute in such case made and provided, the said defendant became liable to pay the said sum of money, in the said note mentioned, to the said plaintiffs, according to the tenor and effect of the same, and the said endorsment thereon; and being so liable, in consideration thereof, then and there undertook and promised to the said plaintiffs to pay them the same according to the tenor and effect thereof, and the endorsement thereon, whenever afterwards he should be thereto requested.

And whereas the said defendant, afterwards, to wit, on the eleventh day of November, in the year of our Lord eighteen hundred and twenty-four, to

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wit, at the county aforesaid, was indebted unto the said plaintiffs in another sum of nine hundred and thirteen dollars thirty-five cents, like money, for the like sum of money, by the said plaintiffs, to and for the use of the said defendant, before that time paid, laid out, and expended, at the special instance and request of the said defendant; and for other money by the said plaintiffs before that time lent and advanced to the said defendant at his special instance and request; and for other money by the said defendant, before that time had and received, to the use of the said plaintiff; and being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the county aforesaid, undertook and promised the said plaintiffs to pay them the said last mentioned sum of money, when afterwards he should be thereunto requested.

Yet the said defendant the said several sums of money herein mentioned, or any part thereof, (although often thereto requested, to wit, on the day and year last aforesaid, and often afterwards, to wit, at the county aforesaid,) hath not paid to the said plaintiffs, but the same, or any part thereof, to pay to the said plaintiffs, has hitherto wholly refused, and still does refuse, to the damage of the said plaintiffs in the sum of two thousand dollars, current money; and therefore they bring suit, and so forth.

J. DUNLOP,
Plaintiff's attorney.

JOHN DOE,
RICHARD ROE, } *Pledges, &c.*

Rule plea.

And thereupon, on motion of the said President and Directors, by their attorneys aforesaid, it ruled by the court here, that the said George B. Magruder answer to the declaration aforesaid of the said President and Directors in the plea aforesaid, or judgment by the court here will be entered against him in default thereof: and the said George B. Magruder, by his attorney aforesaid, defends the force and injury, when, and so forth, and prays leave of the court here to imparle until the first Monday of December next, and then to answer to the declaration aforesaid of the said President and Directors in the plea aforesaid; and to him it is granted; the same day is given to the said President and Directors also.

At which said first Monday of December, in the year of our Lord one thousand eight hundred and twenty-five, to which said day the said George B. Magruder had leave to imparle, and then to answer to the declaration aforesaid of the said President and Directors in the plea aforesaid, come again into the circuit court here, as well the said President and Directors by their attorneys aforesaid, as the said George B. Magruder by his attorney aforesaid; and the said George B. Magruder, by his attorney aforesaid as before, defends the force and injury, when, and so forth, and saith that he did not assume upon himself in manner and form as the aforesaid President and Directors above against him have complained, and of this he puts himself upon the country, and the said President and Directors in like manner, and so forth; therefore let a jury thereon appear before the court here on the first Monday of May next, by whom, &c., and who neither, &c., to recognize, &c., because as well, &c., the same day is given to the said parties, then and there, &c.

Plea of non assumpsit.

And now, at this day, to wit, the said first Monday of May, in the year of our Lord one thousand eight hundred and twenty-six, come again into the said circuit court here, as well the said President and Directors, by their attorneys aforesaid, as the said George B. Magruder, by his attorney aforesaid: whereupon, for trying the issue aforesaid, it is ordered by the court here that twelve persons from the pannel of petit jurors, returned to the court here by the marshal of the district aforesaid, be drawn by ballot, according to the law in such case made and provided; and thereupon, the twelve persons so drawn being called, come, who, being empannelled, and sworn to say the truth in the premises, upon their oath do say, that

Verdict. the said George B. Magruder did assume upon himself in manner and form as the aforesaid President and Directors within against him have complained; and they assess the damages of the said President and Directors, sustained by occasion of the nonperformance of the promise and assumption aforesaid, to the sum of six hundred and forty-three dollars twenty-one cents, current money, with interest from the eighth day of November, eighteen hundred and seventeen, till paid; therefore it is considered

Judgment in verdict. by the court here that the said President and Directors of the Union Bank of Georgetown recover against the said George B. Magruder as well the sum of six hundred and forty three dollars and twenty one cents, current money, with interest thereon from the eighth day of November, in the year eighteen hundred and seventeen, the damages aforesaid, by the jurors aforesaid, in form aforesaid assessed, to be sustained by occasion of the nonperformance of the promise and assumption aforesaid, as the sum of sixteen dollars and sixty-one cents, by the court here unto the said President and Directors, on their assent, adjudged for their costs and charges by them about their suit in this behalf laid out and expended; and the said George B. Magruder in mercy, &c.

Memorandum.—Before the jurors aforesaid withdrew from the bar of the court here, the said George B. Magruder, by his attorney aforesaid, filed in court here the following bill of exceptions, viz:

Bill of exceptions.

UNION BANK OF GEORGETOWN,
vs.
GEORGE B. MAGRUDER.

Upon the trial of this cause, the plaintiffs, in support of the issue joined, offered in evidence to the jury the promissory note hereto annexed, marked A, the handwriting of the maker and the endorsement of the defendant having been admitted; and further proved by the paper hereunto annexed, marked B, that the defendant had, previous to the note falling due, taken out letters of administration, in the county of Montgomery, in the State of Maryland, upon the personal estate of George Magruder, the maker of the said note, the said George Magruder having departed this life previously to the said note falling due. It was admitted that the note in question had never been protested; nor had any notice been given to this defendant that the note was not paid. Upon these circumstances, the counsel for the defendant moved the court to instruct the jury that, before the plaintiffs can recover in this action, it is essential for them to prove demand and notice to the endorser of the nonpayment; which not being done, the verdict should be for

defendant. But the court refused to give the instruction prayed for as aforesaid, and charged the jury that no demand or notice of nonpayment was necessary. To this refusal and instruction the counsel for the defendant excepted; and the court, according to the statute in such case made and provided, sealed this bill of exceptions this sixth day of June, 1826.

B. THRUSTON. [SEAL.]
JAMES S. MORSELL. [SEAL.]

Note—marked A.

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GEORGETOWN, *November* 8, 1817.

Seven years after date I promise to pay to George B. Magruder, or order, six hundred and forty-three dollars and twenty-one cents, with interest, for value received.

GEORGE MAGRUDER.

Endorsed.
GEORGE B. MAGRUDER.

Paper—marked B.

MARYLAND, sct.—*The State of Maryland to all persons to whom these presents shall come, greeting:*

Know ye, that, on the 18th day of Novomber, 1823, by and before the subscriber, register of wills for Montgomery, in the State aforesaid, duly commissioned and qualified, according to law, administration of all the goods, chattels, and credits, which were of George Magruder, late of Montgomery county, and State aforesaid, deceased, was granted and committed unto George B. Magruder, he having first entered into bond with sufficient sureties for the due performance thereof.

In testimony whereof, I have hereunto subscribed my name, and affixed the public seal of my office, this 27th day of May, 1826.

SOLOMON HOLLAND, [SEAL.]
Register of wills for Montgomery county.
Test: W. BRENT, *Clerk.*

Whereupon, the said President and Directors of the Union Bank of Georgetown, by their attorneys aforesaid, pray leave of the court here, according to the form of the law in such case made and provided, to amend their declaration, and declare anew against the said George B. Magruder in the plea aforesaid; and it is granted them: thereupon, the said President and Directors, by their attorney aforesaid, declare anew against the said George B. Magruder in the plea aforesaid, in manner and form, and of the tenor following, to wit:

Amended nar.

DISTRICT OF COLUMBIA, *Washington county, ss.*

George B. Magruder, late of Washington county, was attached to answer unto the President and Directors of the Union Bank of Georgetown in a plea of trespass on the case, and so forth.

Whereupon, the said plaintiffs, by J. Dunlop, their attorney, complain that, whereas, heretofore, to wit, on the eighth day of November, in the year

of our Lord eighteen hundred and seventeen, at Georgetown, to wit, at Washington county aforesaid, one George Magruder, in his lifetime, made his certain promissory note in writing, bearing date the day and year aforesaid, and thereby, then and there, seven years after the date thereof, promised to pay to the said defendant, George B. Magruder, by the name of George B. Magruder, or order, the sum of six hundred and forty-three dollars and twenty-one cents, current money of the United States, for value received, with interest; and the said defendant, to whom, or to whose order the payment of the said sum of money, in the said note mentioned, was to be made, afterwards, before the payment thereof, and before the time limited in the said note for the payment thereof, to wit, on the day and year aforesaid, at the county aforesaid, endorsed the said note, and thereby, then and there, ordered and appointed the said sum of money, in the said note mentioned, to be paid to the said plaintiffs.

And the said plaintiffs aver, that, before the expiration of the said time limited in the said note for the payment thereof, the said George B. Magruder died, and letters of administration on the personal estate of the said George Magruder, were, in due form of law, granted to the defendant by the orphans' court of Montgomery county, in the State of Maryland, to wit, on the 18th November, 1823.

And the said plaintiffs further aver, that, afterwards, and after the expiration of the said time limited in the said note for the payment thereof, to wit, on the eleventh day of November, in the year of our Lord eighteen hundred and twenty-four, they shewed and presented the said , with the endorsement so made thereon as aforesaid, to the said George B. Magruder, as administrator aforesaid, and then and there required the said George B. Magruder, as administrator aforesaid, to pay the same; but the said George B. Magruder, as administrator aforesaid, did not then, or at any time since, pay the same, or any part thereof, to the said plaintiffs, but then and there wholly refused so to do; of all which premises, the said defendant, afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, had notice.

By reason whereof, and by force of the statute in such case made and provided, the said defendant became liable to pay the said sum of money, in the said note mentioned, to the said plaintiffs, according to the tenor and effect of the same, and the said endorsement thereon; and being so liable, in consideration thereof, then and there undertook and promised to the said plaintiffs to pay them the same, according to the tenor and effect thereof, and the endorsement thereon, whenever afterwards he should be thereto requested.

And whereas, also, afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, the said defendant had endorsed the promissory note in the aforegoing first count mentioned, as therein set forth, and delivered the same, so endorsed, to the plaintiffs, as therein stated; and the said note, when the same became due and payable, not having been demanded of the said George Magruder, the maker thereof, therein mentioned, nor protested for non-payment, and notice of such demand and non-payment not having been given to the said defendant; (the said defendant being, before and at the time when said note became due, the administrator of said George Magruder, the maker, who had before then died;) and the said defendant therefore, although no such demand and notice was made and given, well knew that the same was unpaid, either by the said maker, or by himself as administrator of said maker, afterwards, to wit, on the fifteenth day of November,

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in the year eighteen hundred and twenty-four, at the county aforesaid, in consideration thereof, and in further consideration that the plaintiffs would not bring suit on the said note against him as the endorser thereof, but would give time to the said defendant for the payment thereof, he, the said defendant, then and there undertook and faithfully promised that he would, ultimately, and in a reasonable time, pay the same to the said plaintiffs. And the said plaintiffs aver, that they did not then sue the said defendant on the said note, so endorsed as aforesaid, but gave time to the said defendant for the payment thereof, from the said day and year last mentioned until the commencement of this suit, which they aver was a reasonable time, within which the said defendant, according to his said promise, was bound to pay the same.

And whereas the said defendant, afterwards, to wit, on the eleventh day of November, in the year of our Lord eighteen hundred and twenty four, to wit, at the county aforesaid, was indebted unto the said plaintiffs in another sum of fifteen hundred dollars, like money, for the like sum of money by the said plaintiffs, to and for the use of the said defendant, before that time paid, laid out and expended, at the special instance and request of the said defendant; and for other money by the said plaintiffs, before that time, lent and advanced to the said defendant at his special instance and request; and for other money by the said defendant, before that time, had and received, to the use of the said plaintiffs; and being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the county aforesaid, undertook and promised the said plaintiffs to pay them the said last mentioned sum of money when afterwards he should be thereunto requested.

Yet the said defendant the said several sums of money herein mentioned, or any part thereof, (although often thereto requested, to wit, on the day and year, last aforesaid, and often afterwards, to wit, at the county aforesaid,) has not paid to the said plaintiffs, but the same, or any part thereof, to pay to the said plaintiffs, has hitherto wholly refused, and still does refuse, to the damage of the said plaintiffs in the sum of two thousand dollars, current money; and therefore they bring suit, and so forth.

J. DUNLOP,
Plaintiffs' attorney.

JOHN DOE,
RICHARD ROE, } *Pledges, &c.*

Rule plea.

And thereupon, on motion of the said President and Directors, by their attorneys aforesaid, it is ruled by the court here, that the said George B. Magruder answer to declaration aforesaid of the said President and Directors in the plea aforesaid, or judgment by the court here will be entered against him in default thereof; and the said George B. Magruder, by his attorney aforesaid, defends the force and injury, when, and so forth, and prays leave of the court here to imparle until the first Monday of December next, and then to answer to the declaration aforesaid of the said President and Directors in the plea aforesaid; and to him it is granted: the same day is given to the said President and Directors also.

At which said first Monday of December, in the year of our Lord one thousand eight hundred and thirty, to which said day the said George B. Magruder had leave to imparle, and then to answer to the declaration afore-

said of the said President and Directors, in the plea aforesaid, come again into the circuit court here, as well the said President and directors, by their attorneys aforesaid, as the said George B. Magruder, by his attorney aforesaid; and the said George B. Magruder, by his attorney aforesaid as before, defends the force and injury, when and so forth, and saith that he did not assume upon himself in manner and form as the aforesaid President and Directors above against him have complained, and of this he puts himself upon the country, and the said President and Directors in like manner, and so forth; therefore let a jury thereon appear before the court here, on the first Monday of May next, by whom, &c , and who neither, &c., to recognise, &c , because as well, &c., the same day is given to the said parties, then and there, &c.

Plea of non assumpsit.

And now, at this day, to wit, the said first Monday of May, in the year of our Lord one thousand eight hundred and thirty-one, come again into the circuit court here, as well the said President and Directors, by their attorneys aforesaid, as the said George B. Magruder, by his attorney aforesaid: whereupon, for trying the issue aforesaid, it is ordered by the court here that twelve persons from the pannel of petit jurors, returned to the court here by the marshal of the district aforesaid, be drawn by ballot, according to the law in such case made and provided; and thereupon, the twelve persons so drawn being called, come, who, being empannelled, and sworn to say the truth in the premises, upon their oath do say, that the said George B. Magruder did not assume upon himself in manner and form as the said President and Directors within against him have complained; therefore it is considered by the court here that the said President and Directors take nothing by their writ and declaration aforesaid, but that they be in mercy, &c., for their false clamor, and that the said George B. Magruder go thereof without day, &c.; and it is also considered by the court here that the said George B. Magruder recover against the said President and Directors the sum of dollars and cents, by the court here, unto the said George B. Magruder, on his assent, adjudged for his costs and charges by him about his defence in this behalf laid out and expended; and that he have thereof his execution against the said President and Directors, and so forth.

Verdict for defendant.

Judgment on verdict.

Memorandum. —Before the jurors aforesaid withdrew from the bar of the court here, the said President and Directors of the Union Bank of Georgetown, the plaintiffs, filed in court here the following bill of exceptions, to wit:

Bill of exceptions.

UNION BANK OF GEORGETOWN,
against
GEORGE B. MAGRUDER.

In the trial of this cause, the plaintiffs, to support the issues on their part, offered a competent witness, Alexander Ray, who proved that two or three weeks after the note fell due, he had a conversation with defendant—asked him if he could arrange the note, that if he did not, probably the officers of the Bank would be blamed—he said no officer should loose any thing by him; and that there was some property on Cherry street, which witness understood George Magruder, in his lifetime, owned: that he would repair it, and that it would become valuable. Mr. Thompson had had a previous

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conversation with him; the defendant had not been informed by me that the note was over due, and not demanded. Also, James Thompson, who proved that, as soon as it was discovered that the note was over, he and the cashier conversed about it; and about 3 or 4 days after it was over due, he determined to call on defendant and request him to arrange it, and state the circumstances attending the note; that he then called on defendant and found him from home; left word he wanted him, and a day or two after, defendant called at Bank; he went aside with him, told him the circumstances attending the neglect in relation to the note, and requested him to take time and determine what he would do as to arranging the note, telling him that he did not wish defendant to say a word to him to commit himself, but to consider whether if he did not arrange it, the Bank might not do him a greater injury than the amount of the note; that some time after this conversation, he had another with defendant, that defendant asked him if the debt was lost, whose loss would it be; would it fall on any of the officers of the Bank? witness replied that he did not know how that would be; that he could not answer that question; that the Bank would, perhaps, look to the officers; and the defendant then said no officer of the Union Bank should lose any thing by him.

That he afterwards had another conversation with defendant in Mr. Wharton's store; that defendant said he meant to pay the note, but would take his own time for it; that he would not put himself in the power of the Bank. He thinks this last conversation was about 3 or 4 months after the note fell due. That just before the suit was brought, the witness was desired by the President of the Bank to call on the defendant and know what he meant to do with the note; that he did so, and that defendant then said, I will pay that note now, if the Bank will take the house in Cherry street at what it cost me. Witness reported this answer to the President, who said the Bank did not want the house; and shortly afterwards suit was brought.

Plaintiffs further proved that the defendant, when the note fell due, and before, was admin of the drawer of the note, George Magruder, who had died before the note fell due, and who, it is also admitted, was insolvent.

Whereupon, the plaintiffs, on the aforegoing evidence, prayed the court to instruct the jury as follows:

That if the jury believe the defendant held the above conversations as stated by the witnesses, such conversations amount to a waiver of the objection of the want of demand and notice, and the defendant is liable on the note, if the jury should believe that the defendant made the acknowledgments and declarations stated in the conversations in reference to the claim of the Bank upon him as endorser of the note; which the court refused.

And the plaintiffs then prayed the court to instruct the jury as follows:

That if the jury believe, from the evidence aforesaid, that the defendant, after knowing of his discharge from liability as endorser of the said note by the neglect to demand and give notice, said that "he meant to pay the note, but should take his own time for it, and would not put himself in the power of the Bank," and that the Bank forbore bringing suit from the time of said conversation, about three or four months after the note fell due, until the date of the writ issued in this cause, then the plaintiffs are entitled to recover on the second count of the declaration.

Which, also, the court refused to give; to which refusal to give the said instructions the plaintiffs except, and pray the court to sign and seal

this bill of exceptions; which is accordingly done this 18th day of May, 1831.

W. CRANCH. [SEAL.]
B. THRUSTON. [SEAL.]
JAMES S. MORSELL, [SEAL.]
Test: W. BRENT, *Clerk.*

And whereas, afterwards, to wit, on the ninth day of June, in the year of our Lord one thousand eight hundred and thirty-one, the said President and Directors, by their attorneys aforesaid, produced and filed in court here, the United States' writ for the correcting of errors of and upon the judgment aforesaid, directed to the judges of the circuit court of the District of Columbia, in the county of Washington; and, in pursuance thereof, and according to the form and effect of the laws in such case made and provided, a transcript of the record of proceedings of the judgment aforesaid, and all things thereunto relating, with the writ of error aforesaid, and a copy of the appeal bond hereto annexed, is hereby transmitted to the said Supreme Court accordingly.

In testimony whereof, I hereunto subscribe my name, and affix the seal of the said circuit court, for the county aforesaid, at the city of Washington, this 2d day of July, A. D. 1831.

W. BRENT, *Clk. Ct. Ct. Dist. Col.*
C'ty of Washington.

UNITED STATES OF AMERICA.—*The President of the United States to the Judges of the Circuit Court of the United States for the District of Columbia, sitting for the county of Washington, greeting:*

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between the President and Directors of the Union Bank of Georgetown, plaintiffs, and George B. Magruder, defendant, a manifest error hath happened, to the great damage of the said President and Directors of the Union Bank of Georgetown, as by their complaint appears. We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of August next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, which, of right, and according to the laws and the custom of the United States, should be done.

Witness, the honorable John Marshall, Chief Justice of the said Supreme Court.

Issued this ninth day of June, 1831.

W. BRENT, *Clk. Ct. Ct. Dist. Col.*
C'ty of Washington.

UNITED STATES OF AMERICA, *District of Columbia, Washington county, ss.—To George B. Magruder, greeting:*

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday

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of August next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the District of Columbia, in the county of Washington, wherein the President and Directors of the Union Bank of Georgetown are plaintiffs in error, and you are defendant in error, to shew cause, if any there be, why judgment rendered against the said President and Directors of the Union Bank of Georgetown, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the honorable William Cranch, chief judge of the circuit court for the District of Columbia, this ninth day of June, 1831.

W. CRANCH.

Served the within on Richard S. Cox, Esquire, counsellor for the defendant in error, and left a copy with George B. Magruder, July 15, 1831.

THOS. WOODWARD.

Sworn to, before

GEO. NAYLOR, *J. P.*

16*th July*, 1831.

Know all men by these presents, that we, Robert Beverly and Charles A. Burnett, of the county of Washington, in the District of Columbia, are held and firmly bound unto George B. Magruder in the full and just sum of two hundred dollars, current money, to be paid to the said George B. Magruder, his certain attorney, executors, administrators, or assigns; to which payment well and truly to be made and done, we bind ourselves, and each of us, our, and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this ninth day of June, in the year of our Lord one thousand eight hundred and thirty-one.

Whereas, lately, at a circuit court of the United States for the District of Columbia, sitting for the county of Washington, in a suit pending in the said circuit court, wherein the President and Directors of the Union Bank of Georgetown were plaintiffs, and the said George B. Magruder was defendant, judgment was rendered against the said President and Directors of the Union Bank of Georgetown, and they having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation, directed to the said George B. Magruder, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of August next.

Now the condition of the above obligation is such, that, if the said President and Directors of the Union Bank of Georgetown shall prosecute their writ to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

ROBERT BEVERLY. [SEAL.]
CHAS. A. BURNETT. [SEAL.]

Approved:
W. CRANCH.

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SUPREME COURT OF THE UNITED STATES.

No. ~~105.~~ 50.

JOSHUA SHAW, PLAINTIFF IN ERROR,

VERSUS

JOSEPH COOPER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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UNITED STATES OF AMERICA, *ss.*

The President of the United States of America to the Judges of the Circuit Court of the United States for the Southern District of New York—Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, or some of you, between Joshua Shaw, plaintiff, and Joseph Cooper, defendant, a manifest error hath happened, to the great damage of the said plaintiff, as by his complaint appears: We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington on the second Monday of January next, in the said

Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the honorable John Marshall, esquire, Chief Justice of the Supreme Court of the United States, this first Monday of August, in the year of our Lord one thousand eight hundred and thirty-one, and of the independence of the United States the fifty-sixth.

FRED J. BETTS,

Clerk of the circuit court of the United States for the Southern district of New York, in the second circuit.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

The answer of Smith Thompson and Samuel R. Betts, judges of the circuit court of the United States of America, within named, to the within writ, appears by the schedules, hereunto annexed, containing the record within mentioned, and all proceedings thereupon.

FRED. J. BETTS,

Clerk of the Southern district N. Y.

By the honorable Samuel R. Betts, esquire, one of the Judges of the Circuit Court of the United States for the Southern District of New York, in the second circuit:

To JOSEPH COOPER.

Whereas Joshua Shaw lately issued out of the circuit court of the United States for the southern district of New York, in the second circuit, a writ of error directed to the judges of the circuit court of the United States for the southern district of New York, stating, that, in the record and proceedings, as also in the rendition of the judgment of a plea in the said court between Joshua Shaw, plaintiff, and Joseph Cooper, defendant, a manifest error hath happened to the great damage of the said plaintiff.

And whereas, for the correction of that error in due manner, the said writ hath been issued, returnable at the next stated Supreme Court of the United States at the city of Washington, on the second Monday of January next. You are, therefore, hereby cited to appear before the said Supreme Court at the city of Washington, on the said second Monday of January next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of New York, in the southern district of New York, in the second circuit, the ninth day of January, in the year of our Lord one thousand eight hundred and thirty-two, and of the independence of the United States the fifty-sixth.

SAML. R. BETTS.

I hereby admit due service of the within citation; but it is understood that, although the cause is to be put at once upon the callendar, it is not to be brought on to hearing until the next January term. Dated New-York, January 9th, 1832.

R. EMMET,

Att'y for deft.

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SUPREME COURT OF THE UNITED STATES:

JOSHUA SHAW
vs.
JOSEPH COOPER. } *Assignment of errors.*

And hereupon afterwards, to wit, on the second Monday of January, in the year one thousand eight hundred and thirty-two, before the Justices of the Supreme Court of the United States at the city of Washington, comes the said Joshua Shaw, by Samuel A. Foot, his attorney, and says that, in the record and proceedings aforesaid, and also in the matters recited and contained in the said bill of exceptions taken and allowed in this cause, and also in giving the verdict upon the said issue between the parties aforesaid, above joined, and also in giving the judgment aforesaid, there is manifest error in this, that the said judges of the said circuit court before whom the said issue was tried, at and upon the trial thereof, did declare and deliver their opinion to the jury aforesaid, that the said several matters mentioned in the said bill of exceptions, and so as aforesaid produced and proved on the part of the said Joseph Cooper, were, upon the whole of the case, sufficient to bar the said Joshua Shaw of his action aforesaid against him; and that the several matters therein mentioned, and so as aforesaid produced and proved on the part of the said Joshua Shaw, were not, upon the whole of the case, sufficient for the said Joshua Shaw to have and maintain his action aforesaid, against the said Joseph Cooper; and, with that opinion, left the same to the jury. There is also error in this, that, by the record aforesaid, it appears that the verdict aforesaid was given upon the said issue, for the said Joseph Cooper against the said Joshua Shaw; whereas, by the law of the land, the verdict on said issue ought to have been given for the said Joshua Shaw against the said Joseph Cooper. There is also error in this, that it appears by the record aforesaid, that judgment, in form aforesaid, was given for the said Joseph Cooper against the said Joshua Shaw: whereas, by the law of the land, the judgment aforesaid ought to have been given for the said Joshua Shaw against the said Joseph Cooper.

And the said Joshua Shaw prays that the judgment aforesaid for the errors aforesaid and others in the record and proceedings aforesaid, may be reversed, annulled, and altogether had for nothing; and that he may be restored to all which he has lost by occasion of the judgment aforesaid.

SAMUEL A. FOOT,
Att'y, and of Counsel.

Pleas before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit, at the City Hall of the city of New York, in and for the said southern district of New York, on the twelfth day of November, of October term, in the year one thousand eight hundred and twenty nine. Witness, John Marshall, esq. Chief Justice.

FREDERICK A. BETTS, *Clerk.*

[*Venue.*]

SOUTHERN DISTRICT OF NEW YORK, } *ss.*
In the Second Circuit. }

[*Plaintiff's Warrant of Attorney.*]

Joshua Shaw puts in his place Elijah Paine, his attorney, against Joseph Cooper, in a plea of trespass on the case.

[*Defendant's Warrant of Attorney.*]

SOUTHERN DISTRICT OF NEW YORK, *ss.*

Joseph Cooper puts in his place Robert Emmet and Thomas A. Emmet, his attorneys, at the suit of Joshua Shaw in the plea aforesaid.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

Be it remembered, that heretofore, to wit, on the twelfth day of November, in this same term, before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit, at the City Hall, in the city of New York, in and for the said southern district of New York, came Joshua Shaw, plaintiff in this suit, by Elijah Paine, his attorney, and brought into the said court, before the said judges, a certain bill against Joseph Cooper, defendant in this suit, in custody, &c. of a plea of trespass on the case; and there are pledges to prosecute, to wit, John Doe and Richard Roe. Which said bill follows in these words, to wit:

[*Declaration.*]

SOUTHERN DISTRICT OF NEW YORK, } *ss.*
In the Second Circuit. }

Joshua Shaw, plaintiff in this suit, complains of Joseph Cooper, defendant in this suit, in custody, &c. of a plea of trespass on the case. For that, whereas, the said Joshua Shaw, being at the time of the application by him made to the Secretary of State of the United States as hereinafter mentioned, a citizen of the United States before and at the time of the granting the letters patent hereinafter mentioned, was the true, original, and first inventor of a new and useful improvement in guns and fire arms; which improvement consisted in a priming head and cap applied to arms and fire arms for the purpose of priming and giving them fire by the means or use of percussion, fulminating, or detonating powder; and whereas the said Joshua Shaw having, in due form of law, applied to the Secretary of State of the United States in this behalf, and such proceedings as by law were required, having been had thereon, the United States of America heretofore, to wit, on the seventh day of May, in the year one thousand eight hundred and twenty-nine, at the city of Washington, to wit, at the city of New York, in the district and circuit aforesaid, by their letters patent, bearing teste by Andrew Jackson, then being President of the said United States, and bearing date the day and year last aforesaid, and sealed with the seal of the said United States; which said letters patent the said Joshua Shaw now brings here into court. After reciting that the said Joshua Shaw, a citizen of the United States, had alleged that he had invented a new and useful improvement in guns and fire arms, which improvement consisted in a priming head and cap applied to guns and fire arms for the purpose of priming and giving them fire by the means or use of percussion, fulminating, or detonating powder; which improvement, he stated, had not been known or used before his application; had made oath that he did verily believe that he was the true inventor or discoverer of the said improvement; had paid into the Treasury of the United States the sum of thirty dollars, delivered a receipt for the same, and presented a petition to the Secretary of State, signifying a desire of obtaining an exclusive property in the said improvement, and praying that a patent might be granted for

that purpose; did grant, according to law, to the said Joshua Shaw, his heirs, administrators, or assigns, for the term of fourteen years from the nineteenth day of June, one thousand eight hundred and twenty-two, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement: a description of which was given in the words of the said Joshua Shaw himself, in the schedule thereto annexed and made part thereof: as by the said letters patent, and the said schedule, thereunto annexed, reference unto the same being had, will more fully appear. By virtue whereof, and by force of the statute in such case made and provided, the said Joshua Shaw became entitled unto, and vested with, the full and exclusive right of making, constructing, using, and vending to others to be used, his said invention or discovery for the residue of the said term, unexpired on the said seventh day of May, one thousand eight hundred and twenty nine; and became possessed thereof, to wit, on the day and year last aforesaid, at the city of New York, in the district and circuit aforesaid. Yet, the said Joseph Cooper, well knowing the premises, but contriving and fraudulently intending to injure and defraud the said Joshua Shaw in this behalf, and deprive him of the profits, benefits, advantages, and emoluments which he might, and otherwise would, have derived from the full and exclusive right and liberty of making, constructing, using, and vending to others, to be used, his said invention or discovery so vested in him by the said letters patent as aforesaid, after the issuing of the said letters patent, and during the said residue of the said term of fourteen years from the said nineteenth day of June, in the year one thousand eight hundred and twenty-two, to wit, on the first day of August, in the year one thousand eight hundred and twenty-nine, and on divers other days and times between the said last mentioned day and the time of exhibiting the bill of the said Joshua Shaw in this behalf, and within the said United States of America, to wit, at the city of New York, in the district and circuit aforesaid, and within the jurisdiction of this honorable court, unlawfully and unjustly, without the license or consent, in writing or otherwise, of the said Joshua Shaw, and against his will, devised, made, and constructed a large number of guns and fire arms, viz. one thousand thereof, embracing and containing in the construction thereof the said improvement and invention of the said Joshua Shaw, contrary to the form the statutes in such case made and provided, in breach of the said letters patent, and in violation and infringement of the full and exclusive right and liberty therein granted, and thereby prevented and hindered the said Joshua Shaw from having and enjoying the full and whole benefit and advantage thereof, and deprived him, the said Joshua Shaw, of the great gains and profit which he might, and otherwise would, have derived and acquired from the same, at the city of New York aforesaid, in the district and circuit aforesaid.

And the said Joshua Shaw further saith, that he, the said Joshua Shaw, being such inventor as aforesaid, and the said letters patent having been made as aforesaid, and he, the said Joshua Shaw, being entitled unto, vested with, and possessed of, the said full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said invention or discovery, he, the said Joseph Cooper, well knowing the premises, but further contriving and intending as aforesaid, after the issuing of the said letters patent, and within the said residue of the said term of fourteen years, therein mentioned as aforesaid, to wit, on the first day of August, in the year one thousand eight hundred and twenty-nine, and on divers

other days between that day and the time of the exhibiting the bill of the said Joshua Shaw in this behalf, and within the said United States of America, to wit, at the city and county of New York, and within the district aforesaid, and within the jurisdiction of this court, unlawfully and unjustly, and without the license or consent of the said Joshua Shaw, and against his will, made, devised, and constructed, a large number of guns and fire arms, to wit, one thousand thereof, embracing, and containing in the construction thereof, various parts of the said improvement and invention of the said Joshua Shaw contrary to the form of the statutes in such case made and provided, in breach of the said letters patent, and in violation and infringement of the full and exclusive right and liberty therein granted; and thereby prevented and hindered the said Joshua Shaw from having and enjoying the full and whole benefits and advantage thereof; and deprived him, the said Joshua Shaw, of the great gains and profits which he might, and otherwise would, have derived and acquired from the same, to wit, at the city and county of New York, in the district and circuit aforesaid.

And the said Joshua Shaw further saith, that he being such inventor as aforesaid, and the said letters patent having been made as aforesaid, and he, the said Joshua Shaw, being entitled unto, vested with, and possessed of, the said full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said invention and improvement, he, the said Joseph Cooper, well knowing the premises, but further contriving and intending as aforesaid, after the issuing of the said letters patent, and within the said residue of the said term of fourteen years therein mentioned as aforesaid, to wit, on the first day of August, in the year one thousand eight hundred and twenty-nine, and on divers other days between that day and the time of the exhibiting of the bill of the said Joshua Shaw in this behalf, and within the said United States of America, to wit, at the city and county of New York, within the district and circuit aforesaid, and within the jurisdiction of this court, unlawfully and unjustly, and without the license or consent of the said Joshua Shaw, and against his will, made, devised, and constructed, another large number of guns and fire arms, viz. one thousand thereof, in which was counterfeited, imitated, and resembled, the said improvement and invention of him, the said Joshua Shaw, and which differed from the guns or fire arms made according to the said improvement or invention of the said Joshua Shaw only in form, proportion, and composition of matter, not material to the operation of such guns or fire arms, in breach of the said letters patent, and contrary to the form of the statutes in such case made and provided, and in violation and infringement of the full and exclusive right and liberty therein granted; and thereby prevented and hindered the said Joshua Shaw from having and enjoying the full and whole benefit and advantage thereof, and deprived him, the said Joshua Shaw, of the great gains and profit which he might, and otherwise would, have derived and acquired from the same, to wit, at the city and county of New York aforesaid, in the district and circuit aforesaid.

And the said Joshua Shaw further saith, that he being such inventor as aforesaid, and the said letters patent having been made as aforesaid, and he, the said Joshua Shaw, being entitled unto, vested with, and possessed of, the the said full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said invention and improvement, he, the said Joseph Cooper well knowing the premises, but further contriving and intending as aforesaid, after the issuing of the said letters patent, and

within the said residue of the said term of fourteen years therein mentioned as aforesaid, to wit, on the first day of August, in the year one thousand eight hundred and twenty-nine, and on divers other days between that day and the time of the exhibiting of the bill of the said Joshua Shaw in this behalf, and in the United States of America, to wit, at the city and county of New York aforesaid, within the district and circuit aforesaid, and within the jurisdiction of this court, unlawfully, and unjustly, and without the license or consent of the said Joshua, and against his will, vended to others, to be used and sold, other large quantities, to wit, one thousand of guns and fire arms, embracing and containing in the construction thereof the said improvement and invention of the said Joshua Shaw, contrary to the form of the statutes in such case made and provided, in breach of the said letters patent, and in violation and infringement of the full and exclusive right and liberty therein granted; and thereby prevented and hindered the said Joshua Shaw from having and enjoying the full and whole benefit and advantage thereof, and deprived him, the said Joshua Shaw, of the great gains and profits which he might, and otherwise would, have derived and acquired for the same, to wit, at the city of New York, in the district and circuit aforesaid.

And the said Joshua Shaw further saith, that he being such inventor, and the said letters patent having been made as aforesaid, and he, the said Joshua Shaw, being entitled unto, vested with, and possessed of, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said invention and improvement, he, the said Joseph Cooper, well knowing the premises, but further contriving and intending as aforesaid, after the issuing of the said letters patent, and within the said residue of the said term of fourteen years therein mentioned as aforesaid, to wit, on the first day of August, in the year one thousand eight hundred and twenty-nine, and on divers other days between that day and the time of the exhibiting of the bill of the said Joshua Shaw in this behalf, and within the United States of America, to wit, at the city and county of New York, within the district and circuit aforesaid, unjustly, and without the license or consent of the said Joshua Shaw, and against his will, vended to others to be used and sold, another large number of guns and fire arms, to wit, one thousand thereof, embracing and containing in their construction various parts of the said improvement or invention of the said Joshua Shaw, contrary to the form of the statutes in such case made and provided, in breach of the said letters patent, and in violation and infringement of the full and exclusive right and liberty therein granted, and thereby prevented and hindered the said Joshua Shaw from having and enjoying the full and whole benefit and advantage thereof, and deprived him, the said Joshua Shaw, of the great gains and profits which he might and would have derived and acquired from the same, to wit, at the city and county of New York, in the district and circuit aforesaid.

And the said Joshua Shaw further saith, that he being such inventor as aforesaid, and the said letters patent having been made as aforesaid, and he, the said Joshua Shaw, being entitled unto, vested with, and possessed of, the said full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said invention and improvement, he, the said Joseph Cooper, well knowing the premises, but further contriving and intending as aforesaid, after the issuing of the said letters patent, and within the said residue of the said term of fourteen years therein mentioned

as aforesaid, to wit, on the first day of August, in the year one thousand eight hundred and twenty-nine, and on divers other days between that day and the time of the exhibiting of the bill of the said Joshua Shaw in this behalf, within the United States of America, to wit, at the city and county of New York, within the district and circuit aforesaid, and within the jurisdiction of this court, unlawfully and unjustly, and without the license or consent of the said Joshua Shaw, and against his will, vended to others to be used and sold, another large number of guns and fire arms, to wit, one thousand thereof, in which was counterfeited and imitated, and resembled, the said improvement and invention of the said Joshua Shaw, and which differed from the guns and fire arms made according to the said improvement of said Joshua Shaw only in form, proportions, and compositions of matter, not material to the operation of such guns and fire arms, in breach of the said letters patent, and contrary to the form of the statutes in such case made and provided, and in violation and infringement of the full and exclusive right and liberty therein granted; and thereby prevented and hindered the said Joshua Shaw from having and enjoying the full and whole benefit and advantage thereof, and deprived him, the said Joshua Shaw, of the great gains and profits which he might, and otherwise would, have derived and acquired from the same, to wit, at the city and county of New York, in the district and circuit aforesaid.

And the said Joshua Shaw further saith, that he being such inventor as aforesaid, and the said letters patent having been made as aforesaid, and he, the said Joshua Shaw, being entitled unto, vested with, and possessed of, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said invention and improvement, he, the said Joseph Cooper, well knowing the premises, but further contriving and intending as aforesaid, after the issuing of the said letters patent, and within the said residue of the said term of fourteen years therein mentioned as aforesaid, to wit, on the first day of August, in the year one thousand eight hundred and twenty-nine, and on divers other days between that day and the time of the exhibiting of the bill of the said Joshua Shaw in this behalf, and within the United States of America, to wit, at the city and county of New York, within the district and circuit aforesaid, and within the jurisdiction of this court, unlawfully and unjustly, and without the license or consent of him, the said Joshua Shaw, and against his will, devised, made, and constructed, a large number or quantity of a certain instrument, intended to form a part of guns or fire arms, to wit, twenty thousand priming heads, embracing and containing, in the construction thereof, a certain part or portion of the said improvement and invention of the said Joshua Shaw, contrary to the form of the statutes in such case made and provided in breach of the said letters patent, and in violation and infringement of the full and exclusive right and liberty therein granted; and thereby prevented and hindered the said Joshua Shaw from having and enjoying the full and whole benefit and advantage thereof, and deprived him, the said Joshua Shaw, of the great gains and profits which he might and would have derived and acquired from the same, to wit, at the city and county of New York, in the district and circuit aforesaid.

And the said Joshua Shaw further saith, that he being such inventor as aforesaid, and the said letters patent having been made as aforesaid, and he, the said Joshua Shaw, being entitled unto, vested with, and possessed of the said full and exclusive right and liberty of making, constructing, using, and

vending to others to be used, the said invention and improvement, he, the said Joseph Cooper, well knowing the premises, but further contriving and intending as aforesaid, after the issuing of the said letters patent, and within the said residue of the said term of fourteen years therein mentioned as aforesaid, to wit, on the first day of August, in the year one thousand eight hundred and twenty-nine, and on divers other days between that day and the time of the exhibiting the bill of the said Joshua Shaw in this behalf, within the United States of America, to wit, at the city and county of New York, within the district and circuit aforesaid, and within the jurisdiction of this court, unlawfully and unjustly, and without the license or consent of the said Joshua Shaw, and against his will, vended to others, to be used and sold, another large number or quantity of a certain instrument, intended to form a part of guns and fire arms, to wit, twenty thousand priming heads, embracing and containing in the construction thereof a certain part or portion of the said improvement and invention of him the said Joshua Shaw, contrary to the form of the statutes in such case made and provided, in breach of the said letters patent, and in violation and infringement of the full and exclusive right and liberty therein granted, and thereby prevented and hindered the said Joshua Shaw from having and enjoying the full and whole benefit and advantage thereof, and deprived him, the said Joshua Shaw, of the great gains and profits which he might and would have derived and acquired from the same, to wit, at the city and county of New-York, in the district and circuit aforesaid.

And the said Joshua Shaw further saith, that he being such inventor as aforesaid, and the said letters patent having been made as aforesaid, and he, the said Joshua Shaw, being entitled unto, vested with, and possessed of the said full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said invention and improvement, he, the said Joseph Cooper, well knowing the premises, but further contriving and intending as aforesaid, after the issuing of the said letters patent, and within the said residue of the said term of fourteen years therein mentioned as aforesaid, to wit, on the first day of August, in the year one thousand eight hundred and twenty-nine, and on divers other days between that day and the time of the bill of the said Joshua in this behalf, within the United States of America, to wit, at the city and county of New York, and within the district and circuit aforesaid, and within the jurisdiction of this court, unlawfully and unjustly, and without the license or consent of the said Joshua Shaw, and against his will, devised, made, and constructed, a large number or quantity of a certain other instrument, intended to form a part of guns and fire arms, to wit, five hundred thousand priming caps, embracing and containing in the construction thereof a certain part or portion of the said improvement and invention of the said Joshua Shaw, contrary to the form of the statutes in such case made and provided, in breach of the said letters patent, and in violation and infringement of the full and exclusive right and liberty therein granted; and thereby prevented and hindered the said Joshua Shaw from having and enjoying the full and whole benefit and advantage thereof, and deprived him, the said Joshua Shaw, of the great gains and profits which he might and would have derived and acquired from the same, to wit, at the city and county of New York, in the district and circuit aforesaid.

And the said Joshua Shaw further saith, that he being such inventor as aforesaid, and the said letters patent having been made as aforesaid, and he,

the said Joshua Shaw, being entitled unto, vested with, and possessed of, the said full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said invention and improvement, he, the said Joseph Cooper, well knowing the premises, but further contriving and intending as aforesaid, after the issuing of the said letters patent, and within the said residue of the said term of fourteen years therein mentioned as aforesaid, to wit, on the first day of August, in the year one thousand eight hundred and twenty-nine, and on divers other days between that day and the time of the exhibiting of the bill of the said Joshua Shaw in this behalf, within the United States of America, to wit, at the city and county of New York, within the district and circuit aforesaid, and within the jurisdiction of this court, unlawfully and unjustly, and without the license and consent *consent* of the said Joshua Shaw, and against his will, vended to others to be used and sold, another large number or quantity of a certain other instrument intended to form a part of guns and fire arms, to wit, five hundred thousand priming caps, embracing and and containing in the construction thereof a certain part or portion of the said improvement and invention of him, the said Joshua Shaw, contrary to the form of the statutes in in such case made and provided, in breach of the said letters patent, and in violation and infringement of the full and exclusive right and liberty therein granted, and thereby prevented and hindered the said Joshua Shaw from having and enjoying the full and whole benefit and advantage thereof, and deprived him, the said Joshua Shaw, of the great gains and profits which he might and would have derived and acquired from the same, to wit, at the city and county of New York, in the district and circuit aforesaid, to the damage of the said Joshua Shaw three thousand dollars, and therefore he brings suit, &c.

[*Plea.*]

And the said Joseph Cooper, by Robert Emmet and Thomas A. Emmet, his attorneys, comes and defends the wrong and injury when, &c. and says that he is not guilty of the premises above laid to his charge, in manner and form as the said Joshua Shaw hath above thereof complained against him; and of this he puts himself upon the country. And the said Joshua Shaw doth the like, &c.

[*Notice.*]

And the said defendant, with his said plea above pleaded, gives notice to the said plaintiff in the words and figures following, to wit: Please to take notice, that on the trial of the above cause, the above named Joseph Cooper will, under the plea of the general issue aforesaid, insist upon, and give in evidence, that the pretended new and useful improvement in guns and fire arms, mentioned and referred to in the several counts of the said Joshua Shaw's declaration, was not originally discovered or invented by the said Joshua Shaw; also, that the said pretended new and useful improvement, or the material or essential parts or portions thereof, or some or one of them, had been known and used in this country, viz. in the city of New York, and in the city of Philadelphia, and in sundry other places in the United States, and in England, and in France, and in other foreign countries, before the said Joshua Shaw's application for a patent, as set forth in his said declaration; and, also, before the alleged invention or supposed discovery thereof by the said Joshua Shaw.

And further, that the said alleged new and useful improvement, or the material or essential parts or portions thereof, or some or one of them, or the principle thereof, was the invention or discovery of a gun maker, or of some other person, residing in England. And further, that the said patent was void, because in and by the specification or description therein referred to, no distinction or discrimination is made between the parts and portions previously known and used as aforesaid, and any parts or portions of which the said Joshua Shaw may be the inventor or discoverer: the said Joseph Cooper at the same time protesting that he, the said Joshua Shaw, has not been the inventor or discoverer of any part or portion of the said alleged improvement.

And further, that the said patent is void, because the said specification or description does not describe the improvement of which the said Joshua Shaw claims to be the inventor or discoverer in such full, clear, and exact terms, as to distinguish the same from all other things before known, nor so as to enable a person skilled in the art or science of which it is a branch, or with which it is most nearly connected, to make and use the same. And further, that the said patent is void, because it was not granted, issued, or obtained, according to law. And further, that the said patent is void, because it was surreptitiously obtained by the said Joshua Shaw.

[*Continuance.*]

Therefore, to try the issue above joined between the parties aforesaid, it is commanded to the marshal of the southern district of New York that he cause to come before the judges of the circuit court of the United States of America for the southern district of New York, on the last Monday of May next, twelve, &c. each of whom, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. the same day is given to the parties aforesaid, there, &c.

[*Continuance.*]

At which day, and at the place within contained, before the judges of this court, at the City Hall of the city of New York, in the said southern district of New York, come the parties aforesaid, by their attorneys aforesaid, and the jurors of the jury, whereof mention is within made, being summoned, also come; who, to speak the truth of the matters within contained, being chosen, tried, and sworn, say, upon their oath, that the said Joseph Cooper [*Verdict.*] is not guilty of the premises within laid to his charge in manner and form as the said Joshua Shaw hath within complained against him.

Therefore is considered that the said Joshua Shaw take nothing by his [*Judgment.*] bill, but that he and his pledges to prosecute be in mercy, &c. and that said Joseph Cooper do go thereof without day, &c.

And it is further considered that the said Joseph Cooper do recover against the said Joshua Shaw ninety-two dollars and seventy-eight cents for his costs and charges by him laid out about his defence in this behalf, by the court now here adjudged to the said Joseph Cooper, with his assent, according to the form of the statute in such case made and provided, and the said Joseph Cooper have execution thereof, &c.

Judgment signed this 4th day of January, one thousand eight hundred and thirty-two.

FRED. J. BETTS, *Clerk.*

CIRCUIT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF NEW YORK.

JOSHUA SHAW, vs. JOSEPH COOPER. } *Bill of exceptions, to be tacked to the record.*

Bill of exceptions.

Which said issue, in manner aforesaid joined between the said plaintiffs and defendant, afterwards at a circuit court of the United States of America for the southern district of New York, in the second circuit, at the City Hall of the city of New York, in and for the southern district of New York, before Smith Thompson and Samuel R Betts, esquires, judges of the said court, on the ninth day of June, in the year one thousand eight hundred and thirty, came on to be tried; at which day, before the said judges came, as well the said plaintiff as the said defendant, by their respective attorneys aforesaid, and the jurors of the jury aforesaid, whereof mention is within made, being called, likewise came, and were sworn to try the said issue in manner aforesaid joined: and thereupon, to maintain the issue above joined, the said plaintiff then and there gave in evidence certain letters patent of the United States of America, as set forth in the declaration of the said plaintiff, issued on the seventh day of May, in the year one thousand eight hundred and twenty-nine; and also that the improvement for which the said letters patent were granted, was invented or discovered by the said plaintiff in the year one thousand eight hundred and thirteen, or the year one thousand eight hundred and fourteen, and that the defendant had sold instruments which were infringements of the said letters patent. And thereupon the said defendant, to maintain the said issue above joined on his part, then and there proved by the testimony of one witness that he had used the said improvement in England, and had purchased a gun of the kind there, and had seen others use the said improvement, and had seen guns of the kind in the Duke of York's armory in the year one thousand eight hundred and nineteen: and also proved by the testimony of five other witnesses, that, in the years one thousand eight hundred and twenty, and one thousand eight hundred and twenty-one, they worked in England at the business of making and repairing guns, and that the said improvement was generally used in England in those years, but that they had never seen guns of the kind prior to those years; and also proved that, in the year one thousand eight hundred and twenty-one it was known and used in France, and also that the said improvement was generally known and used in the United States of America after the nineteenth day of June, in the year one thousand eight hundred and twenty-two. Whereupon the said plaintiff, further to maintain the said issue on his part, then and there gave in evidence, that the said plaintiff, not being a worker in iron in the year one thousand eight hundred and thirteen, or the year one thousand eight hundred and fourteen, employed his brother, in England, under strict injunctions of secrecy, to execute or fabricate the said improvement for the purpose of the said plaintiff's making experiments. And that the said plaintiff, afterwards, in the year one thousand eight hundred and seventeen, left England, and came to reside in the United States of America; and that, after the departure of the said plaintiff from England, viz. in the year one thousand eight hundred and seventeen, or the year one thousand eight hundred and eighteen,

his said brother divulged the said secret for a certain reward to an eminent gun maker in London: that the said plaintiff, on his arrival in this country, in the year one thousand eight hundred and seventeen, disclosed his said improvement to a gun maker, whom he consulted as to obtaining a patent for the same, and whom he wished to engage to join and assist him. That the plaintiff made said disclosures under injunctions of secrecy, claiming the improvement as his own, and declaring that he should patent it. That the said plaintiff treated his invention as a secret after his arrival in this country, often declaring that he should patent it, and that he assigned as a reason for delaying to patent it, that it was not so perfect as he wished to make it before he introduced it into public use; and that he did make alterations in his invention up to about the date of his patent, which some witnesses considered as improvements, and others did not. That, in this country, the said invention was never known nor used prior to the said nineteenth day of June, in the year one thousand eight hundred and twenty two: that, on that day, letters patent were issued to the said plaintiff, being then an alien, for his said invention, and that the said plaintiff immediately brought the said invention into public use under the said letters patent. That afterwards, and after suits had been brought for violation of the said letters patent, the said plaintiff was advised to surrender them on account of the specification being defective, and that he did accordingly, on the seventh day of May, in the year one thousand eight hundred and twenty-nine, surrender the same into the Department of the Secretary of State of the United States of America, and that, thereupon, the letters patent first above mentioned were issued to the said plaintiff. And the said plaintiff also gave in evidence that, prior to the said nineteenth day of June, in the year one thousand eight hundred and twenty-two, the principal importers of guns from England, in New York and Philadelphia, at the latter of which cities the plaintiff resided, had never heard any thing of the said invention, or that the same was known or used in England; and that no guns of the kind were imported into this country until in the years one thousand eight hundred and twenty four or one thousand eight hundred and twenty-five. And that letters patent were granted in England on the eleventh day of April, in the year one thousand eight hundred and seven, to one Alexander J. Forsyth, for a method of discharging or giving fire to artillery, and all other fire arms; which method he describes in his specification as consisting in "the use or application as a priming, in any mode, of some or one of those chemical compounds which are so easily inflammable as to be capable of taking fire, and exploding without any actual fire being applied thereto, and merely by a blow, or by any sudden or strong pressure or friction given or applied thereto, without extraordinary violence; that is to say, some one of the compounds of combustible matter, such as sulphur or sulphur and charcoal, with an oxmuriatic salt; for example, the salt formed of dephlogisticated marine acid and potash (or potasse,) which salt is otherwise called oxmuriate of potash; or such of the fulminating metallic compounds as may be used with safety; for example, fulminating mercury, or of common gunpowder, mixed in due quantity with any of the above mentioned substances, or with any oxmuriatic salt as aforesaid, or of suitable mixtures of any of the before mentioned compounds;" and that the said letters patent continued in force for the period of fourteen years from and after granting of the same. (It is understood that the patent and specification of Forsyth may be at any time referred to on the argument for correction or explana-

tion of the bill of exceptions) And thereupon the defendant, further to maintain the said issue on his part, gave in evidence a certain letter from the plaintiff to the defendant, dated in December, in the year one thousand eight hundred and twenty four, from which the following is an extract: "Sometime since I stated that I had employed counsel respecting regular prosecutions for any trespasses against my rights to the patent: I have at length obtained the opinions of Mr. Sergeant, of this city, together with others eminent in the law, and that is, that I ought, (with a view to insure success,) to visit England, and procure the affidavits of Manton and others to whom I made my invention known, and also of the person whom I employed to make the lock at the time of invention; for it appears very essential that I should also prove that I did actually reduce the principle to practice, otherwise a verdict might be doubtful. It is therefore my intention to visit England in May next for this purpose; in the mean time, proceedings which have commenced here are suspended for the necessary time."

And the said judges of the said court did thereupon charge and direct the said jury, that the patent of the seventh day of May, in the year one thousand eight hundred and twenty-nine, having been issued, as appeared by its recital on the surrender and cancealment of the patent of the nineteenth day of June, in the year one thousand eight hundred and twenty-two, and being intended to correct a mistake or remedy a defect in the latter, it must be considered as a continuation of the said patent, and the rights of the plaintiff were to be determined by the state of things which existed in the year one thousand eight hundred and twenty-two, when the said patent was obtained.

That the plaintiff's case therefore came under the act passed the seventeenth day of April, in the year one thousand eight hundred, extending the right of obtaining patents to aliens, by the first section of which the applicant is required to make oath that his invention has not, to the best of his knowledge or belief, been known or used in this or any foreign country. That the plaintiff most probably did not know, in the year one thousand eight hundred and twenty-two, that the invention for which he was taking out a patent, had, before that time, been in use in a foreign country; but that his knowledge or ignorance on that subject was rendered immaterial by the concluding part of the section, which expressly declares, that every patent obtained pursuant to that act, for any invention which it should afterwards appear had been known or used previous to such application for a patent, should be utterly void. That there was nothing in the act confining such use to the United States; and that, if the invention was previously known in England or France, it was sufficient to avoid the patent under that act. That the evidence would lead to the conclusion that the plaintiff was the inventor in this case, but the court were of opinion that he had slept too long on his rights, and not followed them up as the law requires, to entitle him to any benefit from his patent. That the use of the invention, by a person who had pirated it, or by others who knew of the piracy, would not affect the inventor's rights, but that the law was made for the benefit of the public as well as of the inventor; and if, as appeared from the evidence in this case, the public had fairly become possessed of the invention before plaintiff applied for his patent, it was sufficient, in the opinion of the court, to invalidate his patent, even though the invention may have originally got into public use through the fraud or misconduct of his brother, to whom he entrusted the knowlege of it. And thereupon the said judges

left the consideration thereof to the jurors aforesaid, and the jurors aforesaid gave their verdict against the said plaintiff upon the said issue: whereupon the counsel of the said plaintiff conceiving that the said charge and direction of the said court to the said jury so as aforesaid given, as to the law upon the said evidence, was incorrect, did except to the same; and inasmuch as the matters aforesaid do not appear by the record of the verdict aforesaid, the counsel on behalf of the said plaintiff prayed that the said judges would set their hands and seals to this bill of exceptions, containing the several matters so proved and and given in evidence, and the charge and direction of the court thereupon as aforesaid, according to the form of the statute in such case made and provided. And thereupon the said Smith Thompson, esquire, hath set his hand and seal thereto, according to the form of the statute in such case made and provided, at the city of New York, in the district aforesaid, on the ninth day of June, the year one thousand eight hundred and thirty.

SMITH THOMPSON, [L. S.]